

REMARKS:

This is a full and complete response to the Office action dated December 23, 2008 and the advisory action of March 2, 2009. Favorable reconsideration of the claims is respectfully requested.

REGARDING THE CLAIMS:

Applicants note that a reply and amendment was filed on February 23, 2009, however, said amendment was not entered. Accordingly, changes to the claims in this paper are made relative to the claims filed and entered August 14, 2008.

Claims 1-3, 6, 8-10, and 13 are pending in the application. Claim 1 and 9 have been amended for clarification and claims 18-21 have been canceled with this reply. No new matter has been added.

PRIORITY – DE 100 30 976.2

Applicants provide herewith a certified translation of the priority document. Accordingly, Applicants submit that the foreign priority date be granted for the present application.

PRIORITY

The Examiner has objected to the claim of priority of the present application to US 09/347,531 ('531) arguing that support for the claims is not found therein. Applicants respectfully disagree and provide the following remarks in support of granting of priority.

Regarding Claim 1

In the Office Action of December 23, 2008, the Examiner objected to the mol% of unsaturated fatty acid recited in claim 1. Applicants have amended claim 1 to remove this feature from claim 1 and also canceled claims 20-21. Accordingly, Examiner's objection is moot in this respect.

The Examiner also argued that item c, the “said polypeptides still having $\Delta 6$ -desaturase activity” is broad but is nevertheless unclear as to which activity the polypeptide has or has retained. Applicants have amended claim 1 to recite “still having $\Delta 6$ -desaturase catalytic activity.” Applicants note that the recitation of “ $\Delta 6$ -desaturase catalytic activity” relates to the kind of reaction which is catalyzed as discussed in the application, for example, on p. 6, line 31 to p. 7, line 4. While the particular percentage of catalytic turnover may depend on the reaction conditions and other factors, Applicants submit that the polypeptide as claimed allows for the catalysis of a specific $\Delta 6$ -desaturation. Accordingly, Applicants submit that claim 1 would be clear to one of ordinary skill in the art and finds full support in the application.

The Examiner also objected to claim 1 asserting that “culturing the organism” does not invariably and inevitably result in protein production of a desired protein. For clarification, Applicants have amended claim 1 to recite “culturing the organism to express said polypeptide.”

Furthermore, Applicants have amended claim 1 to recite “yeast” in place of fungus.

In view of the above, favorable action is solicited.

Regarding Claim 9

In the advisory action of March 2, 2009, the Examiner objected to claim 9 for reciting “without substantially reducing” while 5% of the sequences are changed. Applicants have amended claim 9 to recite “said polypeptide still having $\Delta 6$ -desaturase catalytic activity of the polypeptide” and deleted the recitation of “without substantially reducing.” Support for the amendment can be found at least on p. 6, line 31 to p. 7, line 4 as discussed above.

Furthermore, Applicants have amended claim 9 to recite “yeast” in place of fungus.

In view of the above, favorable action is solicited.

IN RESPONSE TO THE OFFICE ACTION:

REJECTION UNDER 35 U.S.C. § 102:

Claims 1-3, 8-9, and 13 stand rejected under 35 USC §102(b) as being anticipated by **Girke et al.**, Plant J., July 27 1998, Vol. 15 (“**Girke**”). Applicants respectfully traverse this rejection. Claims 6 and 10 stand rejected under 35 USC §103(a) as being unpatentable over **Girke** in view of Napier et al., Curr. Opin. Plant Bio. Apr., 1999 2:123-127 (“**Napier**”). Applicants respectfully traverse these rejections.

As noted above, support for the presently amended claims can be found in the ‘531 application. Accordingly, priority of the present claims extends to the filing of the ‘531 application, namely July 6, 1999. As the **Girke** reference was not published more than 1 year before the priority date of the present application, Applicants respectfully note that the above rejection under 35 USC §102(b) is inapplicable. Additionally, and for similar reasons, the **Girke** reference cannot be used as a basis for rejection under 35 USC §103. Accordingly, Applicants request the above mentioned rejections be withdrawn.

REJECTION UNDER 35 U.S.C. § 112:

Claims 1-3, 6, 8, 18, 20 and 21 stand rejected under 35 USC §112, first paragraph, for failing to comply with the written description requirement.

The Examiner asserted in the Office Action of December 23, 2008 that claims 1 and 20-21 recite a process for preparing an unsaturated fatty acid in a cultured fungus or yeast wherein the cultured organism contains from 1 to 80% or from 1 to 60% or from 1 to 40% of unsaturated fatty acid based on the total fatty acid content in the organism. Applicants have amended claim 1 to remove “1 to 80 mol% of unsaturated fatty acid” and canceled claims 20-21 accordingly the rejection is now moot. Accordingly, Applicants respectfully request the above mentioned rejection be withdrawn.

In view of the comments above, it is respectfully requested that the rejections be withdrawn and a Notice of Allowance issue with respect to the currently pending claims.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: BASF 0093/000032.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner may directly contact the undersigned by phone to further the discussion.

Novak Druce + Quigg LLP
1000 Louisiana, Fifty-Third Floor
Houston, Texas 77002
(713) 571-3400
(713) 456-2836 (fax)
Jason.bryan@novakdruce.com

Respectfully submitted,

/Jason W. Bryan/

Jason W. Bryan
Reg. No. 51,505

April 22, 2009